

MINUTES OF AUGUST 19, 2024

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 19, 2024, at 6:00 p.m. in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Vice Chairman John T. Hastings presiding. The Board members present were Dr. Kevin Carson, Mr. John T. Hastings, and Mr. John Williamson. Also, in attendance were Mr. James Sharp, Esquire – Assistant County Attorney, and staff members Ms. Jennifer Norwood – Planning and Zoning Manager, and Ms. Marina Truitt – Recording Secretary.

The Pledge of Allegiance was led by Mr. Hastings.

Motion by Mr. Williamson, seconded by Dr. Carson and carried unanimously to approve the agenda. Motion carried 3 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

Motion by Dr. Carson, seconded by Mr. Williamson and carried unanimously to approve the Minutes for the June 17, 2024, meeting. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea, and Mr. Hastings – yea.

Motion by Mr. Williamson, seconded by Dr. Carson and carried to approve the Findings of Facts for the June 17, 2024, meeting. Motion carried 3 – 0.

The vote by roll call; Dr. Carson – yea, Mr. Williamson – yea, and Mr. Hastings – yea.

PUBLIC HEARINGS

Case No. 12977 – Bridgeville Storage, LLC seeks a special use exception for an off-premises sign (Section 115-159.5 B of the Sussex County Zoning Code). The property is located South of Connecting Road and East of Public Safety Way. 911 Address: 18747 Connecting Road, Bridgeville. Zoning District: C-1. Tax Parcel: 131-15.00-24.03

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application and zero mail returns. The Applicant is requesting a special use exception for an off-premises sign.

Mr. Ken Christenbury and Mr. Norman Hardy were sworn in to give testimony for this application.

Mr. Christenbury testified that the property is surrounded by a McDonald's, a Sonic restaurant, and a proposed mini-storage facility; that there is also a Food Lion and an Uncle Willie's convenience store nearby; that DelDOT has presented a letter of no objection for the proposal; that

the property is surrounded by commercial zoning and uses; that the proposed billboard will be 150 feet away from any lands with dwellings, churches, schools, etc.; that the letter from DelDOT states construction needed to be started by June 10, 2024, the day the letter was issued; that, per DelDOT, if approved, the construction must be completed by December 10th or 12th, 2024; and that there will not be any effect on traffic.

Mr. Hardy testified that the sign will be a static, two-sided billboard measuring 10 feet by 30 feet per side; that there is a Royal Farms, McDonald's, Sonic restaurant, and Delaware State Police barracks nearby; that the sign will be lit by four, low voltage, LED lights, pointed upwards to the sign; and that the use will not substantially affect adversely the uses of neighboring and adjacent properties.

The Board found that no one appeared in support of or opposition to the Application.

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve the application Case No. 12977 for the requested special use exception, pending final written decision, because the special use exception will not substantially affect adversely the uses of neighboring and adjacent properties.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **special use exception be approved for the reasons stated**. Motion carried 3 – 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea and Mr. Hastings – yea.

Case No. 12978 – John Krafty seeks variances from the rear yard setback requirements for proposed structures (Section 115-50 and 115-183 of the Sussex County Zoning Code). The property is located Northwest of Wades Court within the Canal Corkran Subdivision. 911 Address: 5 Wades Court, Rehoboth Beach. Zoning District: HR-RPC. Tax Parcel: 334-13.00-1441.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no letters in support of the Application, one (1) letter in opposition to the Application, and zero mail returns. The Applicant is requesting a 3 foot variance from the 6 foot rear yard setback requirement for a proposed pool. Ms. Norwood noted that there is a 10 foot rear yard setback so no variance is needed for the proposed second story balcony.

Mr. John Krafty and Mr. Clayton Cox were sworn in to give testimony for this application.

Mr. Krafty testified that their lot is uniquely narrow and shallow compared to the other lots in the neighborhood; that the principal building setback requirement within Canal Corkran is 30 feet; that the principal building setbacks on Wades Court are increased to 40 feet; that a screened porch was built prior to them owning the home and increases the hardship to of placing the pool within the

setbacks; that the lot is uniquely developed thereby limiting pool placement; that there is no possibility that the pool can be placed on the lot without a variance; that the variance is needed to reasonably use the property; that the Applicant did not create the exceptional practical difficulty; that the requested variance will not alter the essential characteristics of the neighborhood; that common area is located to the rear of the property; that many other homes on Wades Court have pools; that the pictures submitted show the foliage that other neighbors have screening their pools; that, if approved, they would have the same screening put in place; that the pool is not very large and offers the minimum variance needed to afford relief; that the additions to the home will be storage, a walk in closet for the master bedroom, pool mechanicals, HVAC, and dining room extension; that a portion of what is currently a wrap-around porch will be converted to extending the dining room; that the HOA has approved the additions; and that the fence surrounding the pool will be on their property.

Mr. Cox testified that all the other homes on Wades Court are custom builds which allow the owners to add a pool into their original design; that there are 3 homeowners associations in the neighborhood; that the Applicant's homeowners association requires a variance from the Board of Adjustment; that the lots on Wades Court have a larger front yard setback because the adjacent lands to the rear are common areas; that they plan to use this home as their retirement home; that they used to own a home on a different street in the community which had a lesser setback requirement and that lot had more room; that they purchased the home in its current form and did not have the option to add a pool from the start; that the common property behind their house is not able to be developed due to exhausting a 15 year period they had to build; that the house is their primary home and they have no desire to turn it into a rental; that the home was built in 2005 by the previous owner; that the president of the Ponds Edge HOA had no objection to the variance or landscaping that would be placed on the Pond's Edge property; that HOA approval is based on the Board of Adjustment's decision; that their home is currently the smallest home on Wade's Court; that the attempt was made to place the pool closer to the home with no success; and that they looked at other options to no avail.

The Board found that no one appeared in support or opposition of the Application.

Mr. Hastings closed the public hearing.

Mr. Williamson moved to approve the application for Case No. 12978 for the requested variance, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to the 40 feet principal building setback instead of 30 feet which is unusual;
2. The exceptional practical difficulty was not created by the Applicant due to the house already being placed prior to his ownership;
3. The variance will not alter the essential character of the neighborhood; and
4. The variance represents the minimum variance necessary to afford relief.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variance be approved**

for the reasons stated. Motion carried 3 - 0.

The vote by roll call; Dr. Carson – yea, Mr. Williamson – yea and Mr. Hastings – yea.

Case No. 12979 – Alan and Laurie Peer seek variances from the front and side yard setback requirements for proposed structures (Section 115-42 of the Sussex County Zoning Code). The property is located East of Mariners Lane within the Pine Crest Terrace Subdivision. 911 Address: 30213 Mariners Lane, Ocean View. Zoning District: GR. Tax Parcel: 134-9.00-126.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or opposition to the Application and zero mail returns. The Applicants are requesting a 4.3 foot variance from the 30 foot front yard set requirement for a proposed dwelling, an 8.5 foot variance from the 30 foot front yard setback requirement for a proposed dwelling, an 8 foot variance from the 30 foot front yard setback requirement for a proposed deck, a 2.5 foot variance from the 30 foot front yard setback requirement for a proposed dwelling, a 25 foot variance from the 30 foot front yard setback requirement for proposed steps, and a 0.5 foot variance from the 10 foot side yard setback requirement on the south side for a proposed overhang.

Mr. Alan Peer and Ms. Laurie Peer were sworn in to give testimony for this application.

Mr. Peer testified that the variance request is for the front steps and overhang on the side of the proposed dwelling; that the cul-de-sac is only on paper and was never fully developed; that he believes they own to the center of the road and the paper cul-de-sac; and that there is no actual cul-de-sac on this street.

Mr. Sharp explained that it is unlikely that the Applicants own to the center of the road as most properties own to the edge of the street.

Ms. Peer testified that the property was previously owned by her parents with a manufactured home placed in 1971; that she inherited the property and plans to build a new house; that this dwelling is the last of the older manufactured homes on the street which need to be replaced; and that everyone uses the same setback and street line.

Mr. Peer testified that the existing dwelling is in the 30 foot setback; that the overhang on the side of the house would cover the doorway and provide lighting; that the lights will be soft, shining downward, with dimmers; and that the property experiences flooding due to being in a flood plain.

Ms. Peer testified that the new dwelling will be farther from the cul-de-sac than the existing dwelling; that the proposed dwelling is on pilings, which require increased steps; that the stairs split at the bottom and turning them another way would impact the aesthetics of the home; that the steps will project farther out due to the house being placed on pilings; and that the steps will be 5 feet from the front yard at the arc of the cul-de-sac.

Mr. Peer testified that the property is subject to flooding in the side yard and rear yard; that the flooding limits where the house can be placed; that the house and steps have to be above the flood plain; that there is a utility pole in the cul-de-sac; that the new house will be deeper than the prior dwelling; that the proposed home cannot be moved into the lot more due to the need of a backyard for gathering and flooding; that there will be a garage on either side of the staircase; that the garages make it so that the steps cannot be turned; that there is room for approximately four more cars in the driveway; and that emergency and utility vehicles have not had issues with access prior to the proposal.

Ms. Peer testified that that there was no opposition when talking to neighbors; that there is a garage on either side of the steps holding two cars; and that the area between the cul-de-sac and White's Creek is a mound which is unusable.

The Board found that no one appeared in support of or opposition to the Application.

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12979 for the requested variances, pending final written decision, for the following reasons:

1. The property has unique physical conditions due to flooding;
2. The variances will not alter the essential character of the neighborhood; and
3. The variances represent the minimum variances necessary to afford relief.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be approved for the reasons stated.** Motion carried 3 - 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea and Mr. Hastings – yea.

Case No. 12980 – John Eller seeks variances from side and rear setback requirements for a proposed structure (Section 115-42 of the Sussex County Zoning Code). The property is located Northeast of Forest Drive within the Oak Orchard Subdivision. 911 Address: 28269 Forest Drive, Millsboro. Zoning District: GR. Tax Parcel: 234-34.08-99.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received one (1) letter in support of the Application, no letters in opposition to the Application, and zero mail returns. The Applicant is requesting a 5 foot variance from the 10 foot side yard setback requirement on the northwest side for a proposed detached garage, a 5 foot variance from the 10 foot rear yard setback requirement for a proposed detached garage and a 1.6 foot variance from the 10 foot rear yard setback requirement for a proposed detached garage.

Mr. John Eller and Ms. Edith Eller were sworn in to give testimony for this application.

Mr. Eller testified that the property is shaped as a parallelogram and is shaped in a way that does not allow for enough room to place a structure in the front yard; that the proposed garage would house a couple cars, his boat, and other outdoor items; that the garage will not alter the essential character of the neighborhood; that, if the garage was to meet setbacks, it would be extremely close to the house and future deck; that the future deck is needed due to the obscene amount of mosquitos in the area; that the neighboring property is owned by his wife, whom has no objection; that the garage will not be an eyesore; that the property is wooded; that the shed will be removed; that the garage will be used to store his classic car; that the proposed location of the garage would allow for a vehicle to have access around the entire home; that there is tree on the property that could be removed but would make fitting the proposed garage tough; that the garage doors will face the side of the property where there is currently a shed to allow for room to swing his boat and trailer in for storage; that he did not look at a smaller garage; that a smaller garage will not work due to the size of his boat and amount of cars; that he has a 21 foot boat plus the room for the tongue and motor; that the garage will be 36 feet deep; that the proposed garage would be roughly 11 feet from the back steps of the house; that building two structures less than 600 square feet is not feasible; that the property has been in the family since 1980; that, if the garage was moved to the other rear corner, it would make it difficult to fit a vehicle around the house; that the Applicants built the house; that the existing porch projects 11 feet from the house; that the proposed deck will be 14 feet deep; that there is no septic system on the lot; that the shed has been on the property a long time; that he prefers to have the garage in the northeast corner; that a garage will also be used for a lawn mower; that his wife owns the lot next door and there is no garage on that lot; and that he has staked out different positions for the garage to be in.

Ms. Eller testified that the front right of the property houses the water, sewer, and electric lines; and that the garage is proposed at an angle due to the shape of the lot.

The Board found that no one appeared in support of or opposition to the Application.

Mr. Hastings closed the public hearing.

Mr. Williamson moved to deny the application for Case No. 12980 for the requested variances, pending final written decision, for the following reasons:

1. The property does not have unique physical conditions;
2. The Applicants have failed to demonstrate that there is no possibility that property can be developed in strict conformity with Sussex County Zoning Code, and the variances are not necessary to enable the reasonable use of the property; and
3. The exceptional practical difficulty was created by the Applicants.

Motion by Mr. Williamson, seconded by Dr. Carson, carried that the **variances be denied for the reasons stated**. Motion carried 3 - 0.

The vote by roll call; Dr. Carson – yea, Mr. Williamson – yea and Mr. Hastings – yea.

Case No. 12981 – Stuart Ortel seeks variances from the corner front yard setback requirement for a proposed structure (Section 115-34 of the Sussex County Zoning Code). The property is located East of Dodd Avenue and West of Elizabeth Avenue within the Ann Acres Subdivision. 911 Address: 21108 Elizabeth Avenue, Rehoboth Beach. Zoning District: MR. Tax Parcel: 334-20.13-103.00

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received four (4) letters in support of the Application, no letters in opposition to the Application, and zero mail returns. The Applicant is requesting a 7 foot variance from the 15 foot corner front setback requirement and an 8 foot variance from the 15 foot corner front setback requirement for a proposed shed.

Mr. Stuart Ortel was sworn in to give testimony for this application.

Mr. Ortel testified that the property was developed in 2015; that there was a previous variance for the existing shed in 2016; that the dwelling is used as his primary residence; that a larger shed is needed and will be pulled in closer to the house and away from the established landscape buffer; that there is a landscape buffer along Dodd Avenue; that the shape of the lot is angled; that the lot is not perfectly square causing a narrowness to the back yard; that Elizabeth Avenue is considered the front yard; that the current shed sits farther towards the rear and side of the property; that the existing shed will be removed and replaced by the proposed shed; that the new shed will be less non-conforming than the existing shed; that, if the shed was placed closer to the house, it would block his neighbor's view of the bay; that he is trying to be respectful of his neighbor; that there is roughly 15 feet between the edge of pavement of Dodd Avenue and the property line; that the landscaping planted many years prior is well established and does not affect any visibility from the road; and that there has not been any objection to the case.

The Board found that no one appeared in support of or in opposition to the Application.

Mr. Hastings closed the public hearing.

Dr. Carson moved to approve the application for Case No. 12981 for the requested variances, pending final written decision, for the following reasons:

1. The variances will not alter the essential character of the neighborhood; and
2. The variances represent the minimum variances necessary to afford relief.

As part of his motion, Dr. Carson imposed the following condition:

1. The existing shed shall be removed.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be approved with conditions for the reasons stated.** Motion carried 3 - 0.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea and Mr. Hastings – yea.

Case No. 12982 – Adam Klemanski seeks variances from the side and rear yard setback requirements for a proposed structure (Section 115-25 of the Sussex County Zoning Code). The property is located Northeast of Reynolds Road. 911 Address: 12737 Reynolds Road, Milton. Zoning District: AR-1. Tax Parcel: 235-8.00-25.02

Ms. Norwood presented the case and stated that the Office of Planning and Zoning received no correspondence in support of or in opposition to the Application, and one (1) mail return. The Applicant is requesting a 15 foot variance from the 20 foot rear yard setback requirement and a 10 foot variance from the 15 foot side yard setback requirement on the north side for a proposed pole building.

Mr. Kyle Coblentz was sworn in to give testimony for this application.

Mr. Coblentz testified that he is presenting on behalf of Mr. Adam Klemanski; that there is an existing asphalt driveway that was installed by the previous owners; that the proposed location of the pole building would preserve the existing horseshoe asphalt driveway, pushing the pole building farther to the side and rear of the property; that the dwelling was placed farther back on the lot reducing the buildable area on the property; that the pole building will have a roof pitch and metal siding with colors to match the existing home; that the pole building will be utilized for the storage of vehicles and other general storage; that there is a small existing shed that will be removed; that the dwelling does not have a garage; that the septic is in the rear south corner of the property; that the size of the building is the minimum needed for the Applicant's needs; that the Applicant would not build a smaller structure; that there is a well in the rear yard; that the neighbors were not contacted for their opinions but no opposition came up; that there will be an unfinished second floor to the pole barn; and that the Applicant has multiple cars that are planned to be stored in the pole building.

The Board found that no one appeared in support of or opposition to the Application.

Mr. Hastings closed the public hearing.

Dr. Carson moved to deny the application for Case No. 12982 for the requested variances, pending final written decision, for the following reasons:

1. The exceptional practical difficulty was created by the Applicant.

Motion by Dr. Carson, seconded by Mr. Williamson, carried that the **variances be denied for**

the reasons stated. Motion carried 3 - 0.

As part of his second, Mr. Williamson stated that he also believed the property could be developed in strict conformity with the Sussex County Zoning Code.

The vote by roll call; Mr. Williamson – yea, Dr. Carson – yea and Mr. Hastings – yea.

ADDITIONAL BUSINESS

Meeting adjourned at 8:04 p.m.